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March 18, 2007SUNDAY  
March 18, 2007

# Opinion

## QUESTION OF THE WEEK

*Do you approve of the Republicans' budget strategy in the Montana House?*

Send your thoughts to the IR by Friday. You can submit your response at [www.HelenaIR.com](http://www.HelenaIR.com), mail it to the IR, P.O. Box 4249, Helena, MT 59604, e-mail it to [irstaff@HelenaIR.com](mailto:irstaff@HelenaIR.com), or fax it to 447-4052. We'll report on your responses the following Monday.

# Let's close a real loophole

**A**t a time when legislators are bringing partisan warfare to new levels, there still appears to be a consensus of sorts on the need to ensure better regulation of "con-sistency service accounts."

Currently, elected officials not only can dump unspent campaign contributions into such accounts, but they can — and do — solicit even more money for the accounts. What we have here, not to put too fine a point on it, is a slash fund. And it is a fund being



an  
**VIEW**

augmented by gifts to elected officials, gifts that they can use for travel expenses and other costs of interacting with the voters. This whole business lies somewhere along the fuzzy line between serving constituents and getting an early start on the next campaign. Both the Senate and the House have passed separate bills to address this ethics loophole, but only one of them addresses it effectively. Senate Bill 91, sponsored by Sen.

Carol Williams, D-Missoula, flat-out states that "no other funds" (beside campaign donations already vetted by campaign finance disclosure rules) may be put into the accounts, and the money "must" be used only for expenses incurred in representing constituents.

The other measure, House Bill 462 by Rep. Diane Sands, D-Missoula, says that elected officials "may accept donations from individuals for deposit in the constituent services account." Helena attorney Jonathan Mott, an expert on political ethics laws, said

this bill could be called the "incumbent protection act." It would let office holders amass a fund of contributions separate from campaign funds and a fund unavailable to future opponents.

The appearance of impropriety is obvious. How many people donate money to a politician without hoping to get something in return for their investment?

We think the Legislature should choose to enact the language of Senate Bill 91, a law that really would snap this loophole shut.

## LEGISLATURE

# Group asks senators to disclose conflicts on constituency funds

By CHARLES S. JOHNSON  
IR State Bureau

HELENA — Senators with constituency accounts should have to disclose their conflicts of interest before voting on a bill addressing these secre-

tive but now-legal funds, Montana Common Cause said Friday.

Jonathan Mott, a Helena attorney who represents the



Sands

watchdog group, wrote Senate President Mike Cooney, D-Helena, and Senate Majority Leader Carol Williams, D-Missoula regarding upcoming action on House Bill 462, by Rep. Diane Sands, D-Missoula. The bill, opposed by Common Cause, is set for a

Senate State Administration Committee hearing on Monday.

Constituency funds are accounts where elected officials may put leftover campaign money, raise money while in office without any limitation on individual donations, unlike in campaigns, and spend it practically on whatever they want. They also aren't required to file any reports disclosing who donated to their constituency accounts and how they spent it.

In his letter, Mott said he wanted the Senate leaders to remind senators of the conflict-of-interest disclosure requirement in state law. "In our judgment, any legislator with a constituency account has an acute, self-serving and personal interest in the outcome of HB462 that creates a conflict such that he or she is required to disclose that

interest prior to voting," Mott wrote.

Cooney allowed Common Cause's letter to be to be distributed to all 50 senators.

"If they have a constituency account, it's up to them to decide if there's any sort of potential conflict,"

Cooney said, adding that this law is "self-enforcing." Mott quoted the state's ethics law to argue for senators to disclose their conflicts of interest if they have constituency accounts.

"In our judgment, a senator who has had or now has a constituency account has such a private or personal interest requiring disclosure before the vote on HB462 because Montana ethics law prohibits any a cash gift greater than \$50 if a reasonable person could believe that this gift contributed to improper influence," Mott said.

Although funds donated to political campaigns are exempt from this law, private, secret accounts unrecognized by current Montana law and funds going into those accounts are not exempt from the gift ban," Mott said.

He said the commissioner of political practices already has said that any private donations greater than the \$50 that have gone into or may be placed into a constituency account could be regarded as a violation of the gift ban.

The Legislature has killed two other bills aimed at restricting constituency accounts, leaving only Sands' HB462, which would still allow elected officials to collect money for their accounts, but would require them to file disclosure reports.

## Committee tables leading constituency account plan

*By MATT GOURAS - Associated Press Writer - 03/21/07*

HELENA — One of the leading plans to regulate secretive constituency accounts was tabled in a party-line vote in a House committee Tuesday.

Republicans on the panel said they prefer another alternative that would still let officials raise money for the accounts, but would require disclosure.

The plan they tabled on a 10-8 vote would have banned new contributions for the accounts. It was carried by Senate Majority Leader Carol Williams of Missoula.

A government watchdog group, Montana Common Cause, said the partisan vote was disappointing. The group had been advocating Williams' measure, saying it offered the cleanest approach to the issue.

Williams' plan would have let lawmakers continue the practice of rolling over excess campaign money into the constituency accounts — while banning them from soliciting new contributions.

A House bill, from Missoula Democrat Diane Sands, would still allow lawmakers to take new money for the accounts, but would require them to disclose account activity.

The constituency accounts have been used a number of ways by Montana's elected officials for years — and are currently not addressed anywhere in state law. Consequently, there is little oversight.

The accounts continue to be used with no disclosure requirements, even though the state's commissioner of political practices has argued the account activity is likely illegal under the state's gift ban.

Supporters of Williams' version said it was better because it cut off all new donations.

"(It) disallowed a new avenue for money to corrupt Montana's political process," said Elizabeth Andrews with Montana Common Cause.

House State Administration Committee chairman Rep. Dennis Himmelberger, R-Billings, said the other version that already cleared his committee and has been sent to the Senate gives lawmakers a way to raise needed money.

"It's my opinion that constituent accounts need to be used for communication and constituency services," he said.

Democrats on the panel argued they should have kept both measures alive — one in the House and the other in the Senate — to give them more options as the Legislature weighs the issue.

"Clean campaigns are important," said Rep. Mary Caferro, D-Helena. "The public perception is important."

Williams' bill is Senate Bill 91. Sands' bill is House Bill 462.

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March 11, 2007

# Sunday Opinion

GUEST COLUMN

## EDITORIAL POLICY

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## Only one constituency account bill deserves to pass

BY JONATHAN MOTL  
and JOHN HEFFERNAN

Over the past 10 years increasing numbers of Montana's elected public officials, from governor to legislators, have closed their campaign accounts and opened new accounts with funds used to cover the costs of communicating with the voters they represent. These so-called "constituency services accounts" were funded by surplus campaign funds and private donations made to then-elected public officials after the election.

The legal authority for these accounts is dubious at best. Montana's election laws subject all campaign funds to contribution limits, full disclosure, regular reporting, a money-laundering ban and a corporate donation ban. Incumbents, however, claim that constituency accounts are not campaign accounts and are therefore secret and not subject to limits or disclosure. If this is the case, then logically, Montana's gift ban should apply to these funds.

The gift ban prohibits all incumbents ("public officials") from accepting any amount greater than \$50 while performing their public duties.

So which is it? Are these constituency services accounts disguised campaign funds or are they subject to the gift ban? The Montana House and Senate have now each passed a bill addressing this issue. Only Senate Bill 91, introduced by Sen. Carol Williams, D-Missoula, and advanced to the House by a vote of the Senate, is worthy of support.

SB91 clarifies law by allowing for constituency services accounts and provides that a successful candidate for any public office may create and deposit their surplus campaign funds into such an account, subject to full reporting. No other funds can be deposited in the account. Election integrity is maintained because the surplus campaign funds were raised subject to election laws, including disclosure, donation limits, the money-laundering ban and the corporate

donation ban. SB91 does not change Montana's gift ban.

The House addressed this issue by passage of HB462 offered by Diane Sands, D-Missoula. HB462 also allows for constituency services accounts funded by surplus campaign funds, then takes the accounts two steps further by allowing proceeds from a "public event or function" and "donations from individuals" to be deposited into such an account. A new set of contribution limits are created for the account along with reporting requirements.

HB462 could be aptly titled the "Incumbency Protection Act," since it unfairly provides an enormous fundraising advantage to incumbents. HB462 allows an incumbent running for re-election to simultaneously open and maintain a constituency account and a campaign account, each subject to separate limits. A challenger can only have a single campaign account subject to single contribution limits. Given that election law is subject to rigorous

constitutional examination, there is a fairness or equal protection problem with HB462 in that it allows a contributor to provide twice as many dollars to the incumbent. HB462 is also a full-scale attack on the gift ban, as it legalizes the practice of an incumbent taking money from individuals and events while performing the duties of a public official.

The reasons to oppose HB462 are:

1) It is likely unconstitutional and it guts Montana's ethics or gift ban requirements by allowing a public official to solicit non-campaign funds while in office; and,

2) It unfairly favors incumbents by tilting the playing field further in their favor.

Montanans should support SB91. It provides for a legitimate use of surplus campaign funds that benefits the public. SB91 does not attack Montana's gift ban and SB91 does not open a new avenue for money to corrupt Montana's political process.

*Jonathan Motl and John Heffernan are board members of Montana Common Cause.*



Story available at <http://www.billingsgazette.net/articles/2007/03/10/opinion/guest/50-legiban.txt>

Published on Saturday, March 10, 2007.  
Last modified on 3/10/2007 at 2:14 am

## Guest Opinion: 'Constituency' accounts must not violate state gift ban

By JONATHAN MOTL  
and JOHN HEFFERNAN

Over the past 10 years, increasing numbers of Montana's elected public officials, from governor to legislators, have closed their campaign accounts and opened new accounts with funds used to cover the costs of communicating with the voters they represent. These so-called "constituency services accounts" were funded by surplus campaign funds and private donations made to then-elected public officials after the election.

The legal authority for these accounts is dubious at best. Montana's election laws subject all campaign funds to contribution limits, full disclosure, regular reporting, a money-laundering ban and a corporate donation ban. Incumbents, however, claim that constituency accounts are not campaign accounts, and are therefore secret and not subject to limits or disclosure. If this is the case, then logically, Montana's gift ban should apply to these funds. The gift ban prohibits all incumbents ("public officials") from accepting any amount greater than \$50 while performing their public duties.

### Support SB91

So which is it? Are these constituency services accounts disguised campaign funds or are they subject to the gift ban? The Montana House and Senate have now each passed a bill addressing this issue. Only Senate Bill 91, introduced by Carol Williams and advanced to the House by a vote of the Senate, is worthy of support.

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## **Unfair advantage**

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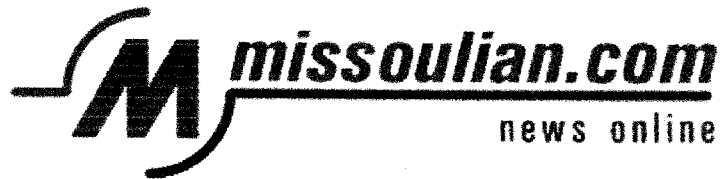
Given that election law is subject to rigorous constitutional examination, there is a fairness or equal protection problem with HB462 in that it allows a contributor to provide twice as many dollars to the incumbent. HB462 is also a full-scale attack on the gift ban, as it legalizes the practice of an incumbent taking money from individuals and events while performing the duties of a public office.

The reasons to oppose HB462 are: 1) It is likely unconstitutional and it guts Montana's ethics or gift ban requirements by allowing a public official to solicit noncampaign funds while in office; and, 2) It unfairly favors incumbents by tilting the playing field further in their favor.

Montanans should support SB91. It provides for a legitimate use of surplus campaign funds that benefits the public; does not attack Montana's gift ban; and does not open a new avenue for money to corrupt Montana's political process.

*Jonathan Motl of Helena and John Heffernan of Missoula are board members of Montana Common Cause.*

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**Letters for Tuesday, March 6, 2007**

**•Constituent accounts**

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**Stop unregulated campaign funds**

We've always been proud of our "citizen legislature" in Montana. We like to have our legislators meet once every two years in a rather frantic 90-day session and then go home to their jobs.

We don't want our politicians to be politicians. But raising lots of money has become such a widespread political role that it spreads even to Montana. There are leftover campaign funds, now converted to "constituent accounts," accounts that an excellent Missoulian editorial (Feb. 23) rightly describes as an "unregulated campaign funds."

These funds are the subject of at least five bills in the current legislature and are being followed closely by the Montana League of Women Voters. We supported a bill to stop them altogether, but it was tabled.

So, presently, the League advocates that no donations be allowed to these accounts, that they be reported and tracked by the office of political practices, preferably electronically so that they will be as transparent as possible.

There are only two of the several bills meeting the standards of the Montana League of Women Voters and they are Senate Bill 91 and House Bill 562. Neither bill allows donations and both require reporting. There are still some unsolved problems with these two bills, but they are a step in the right direction.

Thanks to the Missoulian for the excellent editorial, and thanks as well to other newspaper editorial boards around the state who have also worked in the past month to inform the public on the important subject of constituent accounts.

*Sara Busey, Missoula, and two co-signers,  
Montana League of Women Voters Legislative Steering Committee*

Published on Monday, March 05, 2007.

## **Gazette Opinion: Least-worst bill on 'constituency' funds needs to pass**

First there were five, now there are two. Two bills still alive address the glaring problem of "constituency accounts."

Regrettably, the best proposal - to eliminate these accounts that elected officeholders have been allowed to maintain for "constituent services" - died on a party-line vote. Sen. Roy Brown, R-Billings, proposed ending the practice and requiring all existing accounts to be closed by year's end. His bill never made it out of committee, and all 26 Senate Democrats voted against blasting it out to the House floor.

The lack of bipartisan support is surprising considering that constituency accounts have been around for years, but it wasn't until this year, with Democrats in control of the governor's office and Senate, that momentum built to resolve the problems they create.

### **Halting gift solicitations**

With Brown's bill dead, legislators must go with the least-worst alternative. That's Senate Bill 91, introduced by Sen. Carol Williams, D-Missoula. As amended and passed by the Senate on a 37-13 vote, Williams' bill would put a stop to the most onerous aspects of these accounts. Officeholders could no longer solicit donations.

The only contributions to the accounts would be "surplus" campaign funds. SB91 also requires that officials report expenditures on a semiannual basis to the commissioner of political practices. At present, there is no reporting requirement for expenditures or for receipts.

SB91 states that the account is to be used for "expenses in representing constituents or for travel or expenses related to the individual's elected position."

The shortcoming of such a plan is that these unusual accounts could still be a repository for gifts that create conflict of interest or the appearance of it.

Incumbents who don't face tough re-election opposition, for example, could easily raise "surplus" campaign funds, knowing that they would be used in a constituency account throughout the term of office.

### **Regulation better than nothing**

But Williams' bill is better than the other survivor, House Bill 462, introduced by Rep. Diane Sands, D-Missoula.

Sands' bill, which passed the House on an 85-14 vote, would continue the practice of officeholders' soliciting and accepting donations for these accounts after they take office.

Williams' bill is the better choice.

The worst possible outcome would be for the Legislature and Gov. Brian Schweitzer to reject both bills. The status quo allows unlimited donations and has no reporting requirements.

That is unacceptable for a state seeking higher ethical standards in government.



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Article published Mar 1, 2007

## **Lawmakers headed right way on leftover funds**

Dennis Unsworth is onto something when he says new laws are needed to regulate, if not outright do away with, the slush funds many elected officials have accumulated over the years.

The officials don't call them slush funds, of course. They're called "constituency accounts."

Presumably the name derives from what began as their primary use — so far as anyone knows — which is buying small items such as cards for constituents, paying for official travel that isn't covered by their jobs, conducting surveys and so on.

The accounts started out as simply money left over from political campaigns or other efforts, but more recently they've become the objects of some direct contributions.

For example a Billings representative recently sent out a letter soliciting donations of any size for her constituency account.

Eight other lawmakers got \$1,000 each from the Democratic Legislative Campaign Committee last year and placed that money into constituency accounts.

And Gov. Brian Schweitzer has a hefty 46 grand in his constituency account, but it's just the money left over from contributions to pay for his inaugural ball. He said he's not taking new donations to the account, and that's just as well.

It all seems innocent enough, but the problem is that since the accounts are nowhere addressed in state law, they also are nowhere regulated or "transparent" — the current buzzword for open for public view.

The fact is, in many cases the public doesn't have any idea where the money came from or how it's used.

Seeing that vacancy in the Montana Code Annotated, Unsworth believes the accounts should come under state government's ban on gifts to government officials of \$50 or more.

The state ethics code forbids such gifts "that would tend improperly to influence a reasonable person."

So far in the present Legislature, the whole universe appears to be on the table.

A number of bills on constituency accounts were introduced and three have been passed and transmitted to the other house.

That's not too surprising, except that the two Senate bills are in direct conflict with each other.

One, by Sen. Carol Williams, D-Missoula, allows establishment and regulation of the accounts. That's SB91 that passed Saturday. The House bill that passed overwhelmingly, HB462 by Rep. Diane Sands, D-Missoula, is more like Williams' Senate bill.

The other Senate bill, SB509 by Sen. Steven Gallus, D-Helena, flatly prohibits the accounts, and it passed Tuesday.

Gallus said Wednesday that senators wanted the House to have both options: Ban the accounts and provide a  
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mechanism to cover some of the incidental expenses of government service, or allow the accounts for leftover campaign money only, and impose strict reporting requirements.

Either approach is satisfactory. The expenses of constituent service *should* be covered somehow, but these slush funds shouldn't continue in their present form.

Judging by the regulate-and-report bill already passed by the House, the smart money probably is on the Williams-Sands approach to the problem.

Taking no action on the issue is the one thing that should *not* happen in this session.

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## **Ethics chief: constituency account donations likely illegal**

[Print Page](#)

**Posted on Feb. 26**

*By MATT GOURAS of the Associated Press*

HELENA - The state's new ethics chief says the public officials who have accepted donations to their constituency accounts may have broken the law, an opinion under dispute.

The constituency accounts that may be put to a variety of uses have been used by Montana's top elected officials for years and are not addressed anywhere in state law. Consequently, there is little oversight.

Lack of a law defining the accounts could be their undoing.

The new commissioner of political practices, Dennis Unsworth, maintains that state government's "gift ban" applies to donations that officials have placed in their constituency accounts.

Unsworth, charged with enforcing the gift ban, said the issue is untested. But he said he believes elected officials can only accept money under campaign-finance law, or as defined by the state's so-called gift-ban law.

There is no other provision, legally, for elected officials to take money, he said.

"People are not clear on these restrictions," he said. "Or maybe they have not thought of how it would apply in this area."

Attorney General Mike McGrath disagreed, saying donations to constituency accounts are not gifts in the legal sense. He said the rules that allow the constituency accounts to exist banned using the funds for personal benefit.

"The (gift ban) statute clearly does not apply to constituent accounts," McGrath said.

Unsworth's office is not allowed, by law, to initiate cases. Before a case commences, his office must receive a complaint from a member of the public.

Montana's gift ban - outlined under the ethics code - applies to gifts of \$50 or more "that would tend improperly to influence a reasonable person."

"There are two areas of the law that speak to a public official receiving money," Unsworth said. "You either receive it under the campaign-finance restrictions, or you receive it under the ethics restrictions."

Last year an Associated Press survey of elected officials, combined with subsequent interviews and earlier complaints, found a number of public officials have likely taken constituency-account donations greater than \$50.

- McGrath provided bank statements showing his account received deposits in excess of \$5,000 and checks as large as \$2,995 were written on that account, for an unspecified purpose.
- Gov. Brian Schweitzer put roughly \$46,000 into his constituency account, rolled over from the account that financed the ball celebrating his inauguration. Schweizer has said he did not accept new donations to the account.
- Secretary of State Brad Johnson released the most detailed records, showing donations in excess of \$100 from the lobbying group Gage International, law firms and others.
- Last summer, it was discovered that eight lawmakers each accepted \$1,000 from the Democratic Legislative Campaign Committee and placed the money in their constituency accounts.
- Rep. Arlene Becker, D-Billings, recently was soliciting constituency-account donations with a letter that asked for donations of any size.

Officials defending the accounts said they have simply been following common practice. They said the money is used for such inconsequential items as Christmas cards for constituents, surveys and official travel.

Many, including McGrath and Schweitzer, have said new laws are needed to bring clarity to the accounts.

Johnson's office said the secretary of state welcomes Unsworth's review, and noted there have been different legal opinions on the topic.

"Brad has always run the most open, most disclosed constituency fund of any statewide officeholder that has one," said spokesman Bowen Greenwood. "And he is a big supporter of constituency funds being brought more into line with the spirit of openness that infuses Montana's other campaign-finance laws."

A number of bills advancing in the Legislature would force regulation of the accounts, and would require disclosure that would shed light on their use.

Unsworth said the new laws make sense.

The constituency accounts began as a place for politicians to put excess campaign donations, then became funds that elected leaders use for almost any purpose.

Helena attorney Jonathan Motl, well-versed in state campaign finance law, agrees with Unsworth that the gift ban applies to constituency accounts. He said the problem is that public officials haven't thought about it.

"I don't think there is a single one of them that would do anything wrong if they thought it was wrong," Motl said.

And even if someone were to complain about the donations, and force an investigation, there is no guarantee wrongdoing would be found.

No one has ever been found guilty of violating the state's gift ban. The ethics law has a number of caveats - such as a provision that gifts be "primarily for rewarding the person."

The highest profile, recent case under the language came when former Gov. Judy Martz was accused of profiting in a land deal with Atlantic Richfield Co. The former commissioner of political practice ruled in her favor.

"There are a lot of exceptions," Unsworth said. "But in the end, it really is a ban on receiving gifts of substantial value."

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